



STATE OF CONNECTICUT
DEPARTMENT OF TRANSPORTATION



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DOCKET NUMBER 0702-C-41-T
(Case No. TX12-2104-41)

RE: IN THE MATTER OF THE CITATION OF THE YELLOW
CAB COMPANY D.B.A. YELLOW CAB.

Final Decision

August 12, 2009

I. INTRODUCTION

A. Allegations

By citation dated July 29, 2008, issued by the Department of Transportation (hereinafter "department"), pursuant to Connecticut General Statutes Section 13b-97, as amended, The Yellow Cab Company d.b.a. Yellow Cab (hereinafter "respondent"), located at 86 Granby Street, Bloomfield, Connecticut, and holder of Taxicab Certificate Number 1, was ordered to come before the department to answer allegations made therein.

Pursuant to said citation, the respondent was directed to appear at the Newington office of the Department of Transportation to show cause why Taxicab Certificate Number 1 should not be suspended, revoked or assessed a civil penalty for violation of its operating certificate issued in accordance with Connecticut General Statutes Section 13b-97, as amended, based on the following allegations:

1. On June 30, 2004, the respondent knowingly allowed a taxicab driver to operate a taxicab registered to the respondent while his taxicab license was suspended, in violation of Regulations of Connecticut State Agencies (hereinafter "RCSA") Section 13b-96-27(1);
2. On June 30, 2004, the respondent permitted and authorized a person to operate a taxicab that was not properly licensed to operate a taxicab, in violation of RCSA Section 13b-96-27(4);
3. On June 30, 2004, the respondent failed to check the driver's history of a driver to determine whether that driver was qualified to drive a taxicab, in violation of RCSA Section 13b-96-28(7);
4. On June 30, 2004, the respondent failed to conduct a safety inspection of its taxicab bearing registration number T3457T, in violation of RCSA Section 13b-96-49(a);
5. On June 30, 2004, the respondent failed to be fully knowledgeable regarding the motor vehicle laws and Department of Transportation regulations concerning the operation of taxicabs in violation of RCSA Section 13b-96-4; and

6. The respondent failed to require that all drivers give notification of all violations of federal, state or local laws related to criminal, safety or motor vehicle violations or notification of any revocation, suspension, cancellations or disqualification of the drivers' operator's license, endorsement or permit or the right or privilege to drive for any period in violation of RCSA Sections 13b-96-29(a) and 13b-96-29(b).

The citation was served upon the respondent by first class and certified mail and recited the department's reasons for issuing same.

B. Hearing

Pursuant to Section 13b-97 of the Connecticut General Statutes, as amended, the public hearing for this citation was held on November 12, 2008 and June 24, 2009.

Notice of the citation and of the hearing to be held thereon was given to the respondent and to such other parties as required by General Statutes Section 13b-103, as amended.

The hearing on this matter was conducted by a hearing officer designated by the Commissioner of Transportation, pursuant to Section 13b-17 of the General Statutes.

C. Appearances

The Yellow Cab Company d.b.a. Yellow Cab appeared through Marco Henry, its owner and was represented by Stanley Falkenstein, Esq. whose mailing address is 113 East Center Street, Manchester, Connecticut. The Yellow Cab Company has a mailing address of 86 Granby Street, Bloomfield, Connecticut.

Eugene Morris, public transit inspector, of the Regulatory and Compliance Unit of the Department of Transportation, presented the evidence on behalf of the Regulatory and Compliance Unit.

II. FINDINGS OF FACT

Based on substantial evidence on the record, I find the following facts:

1. The respondent is holder of taxicab Certificate Number 1 and is authorized to operate motor vehicles in taxicab service. Department Exhibit No. 1.

2. On June 30, 2004, a taxicab vehicle bearing marker plate T3457T was registered to the respondent. Department's Exhibit No. 5.

3. On June 30, 2004, Neville Robinson was driving the vehicle registered to the respondent and was transporting a passenger, in the course of his employment as a taxicab driver. Department Exhibit No. 10.

4. On June 30, 2004, Robinson was involved in a car crash resulting in Robinson's death and in serious injury to the passenger. Department's Exhibit No. 10 at Page 3.

5. On July 1, 2004, the physical exam, by a certified mechanic for the Connecticut State Police, of the rear breaks of the subject taxicab found that the right side rear brake pads were extremely worn with the metal coming into contact with the rotor. Department's Exhibit No. 10, Page 12; Respondent's Exhibit E.

6. The physical exam, by the certified mechanic for the Connecticut State Police, of the right side rear brakes of the subject taxicab revealed that the piston to said brake was fully extended and the rotor heavily scored due to the contact of the metal from the break pad. Department's Exhibit No. 10, Page 12; Respondent's Exhibit E.

7. The physical exam of the subject taxicab, by the certified mechanic for the Connecticut State Police, showed the left side brake pads were also worn down to metal and that there were deep grooves scored into the rotor. Department's Exhibit No. 10, Page 12; Respondent's Exhibit E.

8. The physical exam of the taxicab, by the certified mechanic for the Connecticut State Police, showed that the piston to the right brake was broken on its end, which was determined to be pre-impact damage. Department's Exhibit No. 10, Page 12; Respondent's Exhibit E.

9. The physical exam of the subject taxicab, by the certified mechanic for the Connecticut State Police, showed also that lug nuts to the left rear tire were not securely tightened. Department's Exhibit No. 10, Page 12; Respondent's Exhibit E.

10. "The vehicle's deficient braking system and improperly secured left rear tire contributed to the vehicles inability to maintain stability and decrease its speed. The vehicles braking system and loose left rear tire contributed to this crash." Department Exhibit No. 14, P. 6.

11. On April 22, 2004, Neville Robinson was arrested for Driving While Intoxicated while driving a vehicle bearing marker plate T4671T, registered to the respondent. Department's Exhibit No. 17, Second and Third Page.

12. At the time of the incident on April 22, 2004, the respondent "Yellow Cab Company was advised of the situation, and was enroute to pick up the vehicle." See Department's Exhibit No. 17, P. 5.

13. At the time of the motor vehicle accident on June 30, 2009, Neville Robinson's driver's license was suspended. Department's Exhibit No.7.

14. At the time of the motor vehicle accident on June 30, 2004, Neville Robinson was driving under the influence of alcohol. Department's Exhibit No. 12, P. 3.

II. DISCUSSION

The Department of Transportation has jurisdiction over matters pertaining to the operation of motor vehicles in taxicab service in the State of Connecticut accordance with Connecticut General Statutes Section 13b-96, as amended.

Pursuant to Connecticut General Statutes Section 13b-97 the department may amend, or for sufficient cause suspend or revoke any such permit. Further, the department may impose a civil penalty on any person who violates any provision of the governing chapter or any regulation adopted under Section 13b-96, as amended, with respect to fares, service, operation or equipment, in an amount not to exceed one hundred dollars per day for each violation.

The evidence in this matter shows that there was a motor vehicle accident on June 30, 2004 that involved a taxicab driven under the taxicab certificate held by The Yellow Cab Company d.b.a. Yellow Cab. The taxicab was being driven by Neville Robinson. Neville Robinson was killed in the crash and the passenger was seriously injured.

The police reports, created and attested to by the reporting Connecticut State Police, show that the police investigation resulted in the identification of several factors that contributed to the accident. These factors

included pre-impact broken piston to the right brake, left and right side brake pads were worn to the metal, fully extended right brakes and heavily scored rotor, loose lug nuts on the left rear wheel and intoxication of the driver.

The first allegation against the respondent cites Regulations of Connecticut State Agencies Section 13b-96-27(1) which prohibits a certificate holder to permit the operation of unlawful activities in a taxicab. There is no evidence on the record that there was "unlawful activity" in the taxicab, nor that the respondent knew about any "unlawful activity. Accordingly, this allegation is dismissed.

The second allegation is that the respondent permitted and authorized a person to operate its taxicab when the driver was not properly licensed to operate a taxicab. This allegation is supported by the evidence in that the taxicab driver, driving under the respondent's certificate, was driving with a suspended license. The respondent's management argues that he did not know that his driver had a suspended license. The respondent argues that it did not receive the Public Passenger Endorsements/Restrictions OR O/S Permits Suspended report (See Department's Exhibit No. 8). This report is presumably sent to all taxicab companies on a weekly basis. Marco Henry, the respondent's owner, argued that the Department of Motor Vehicles had problems with the list and did not always mail them on time.

Whether the suspension report was or was not mailed to the respondent is not at issue. The certificate holder's management has an affirmative duty to know if anyone driving under such certificate has a license in good standing. Just because the respondent may not have received the report does not absolve it of its responsibility to actively seek such information to ensure that it is in compliance. Much like taxes, even though one may not get a tax return in the mail to complete, the taxes are still due and owing. It is the taxpayer's responsibility to get a form and fill it out – much like it is the respondent's responsibility to get the reports from DMV and review them and take actions accordingly.

The third allegation mimics the second, in that the respondent failed to check the driver's history to determine his qualifications to drive the taxicab. A certificate holder has an affirmative duty to ensure that his/her taxicab driver has the credentials to drive. The respondent in this instance, did not ensure that Neville Robinson was authorized to drive its taxicab. Especially in light of the prior knowledge that the respondent had as to Robinson's prior mishap with alcohol and driving. Although the respondent argues that it did not know of Robinson's prior accident or his drinking and driving, the investigation report submitted by the Regulatory and Compliance Unit, which was a report attested to by its author, an officer whose responsibility was to investigate and

report such incidents, indicates that the respondent company was advised of a prior incident with Robinson in April 2004 and that the respondent went to pick up the taxicab after Robinson was arrested. The respondent's argument that it had no knowledge of Robinson's prior incident is not believable.

As to the fourth allegation, the failure of the respondent to conduct a safety inspection on the subject vehicle, the respondent provided five sheets (Respondent's Exhibits A, B, C, D and E) purporting to show inspections of the vehicle in question. At the outset, Exhibit B is untrustworthy and unreliable, as the exhibit is not legible and appears to have been altered in several places with words crossed out and words traced, etc. Therefore, Respondent's Exhibit B is given no weight.

Respondent's Exhibit A is a Public Service Inspection Report for the vehicle in question (VIN ending in 697154) showing the odometer reading at 105702 and showing tire depths. Further, the report shows first inspection with stamps only on the categories for Tires & Wheels, Wipers and Horn and the report is dated April 22, 2004. But for the odometer reading, this document is of little weight.

Respondent's Exhibit C is a document entitled Connecticut Dispatch Quarterly Vehicle Inspection Report and is dated June 2, 2004 for the vehicle in question (VIN ending in 697154). The mileage is reflected as 111,348, which is 5,646 miles more than that listed on April 22, 2004. This inspection report merely lists items that are "cosmetic" in nature, such as the seats, seat belts, brake lights, windows, cleanliness, etc. No category on Respondent's Exhibit C indicates that the brakes, brake pads or rotors were inspected. The only information of note is that the inspection failed on the tail lights and there is no notation as to re-inspection or passing on re-inspection as to the tail lights.

Respondent's Exhibit C is of no probative value as to any inspection of brakes, brake pads or rotors. Exhibit C confirms only that the vehicle in question had 5464 more miles on June 30, 2004 than it did on April 22, 2004, but that in and of itself does not prove that an inspection was completed on that vehicle. But for the testimony of the respondent, the record is silent as to any inspections of the vehicle in question as regards brakes, brake pads or rotors. In fact, Respondent's Exhibit C does not even indicate that the failed tail lights were repaired or re-inspected or passed, thereby creating the presumption that the vehicle was not inspected for safety, at least between April 22, 2004 and June 30, 2004.

As to the issue of the respondent's prior knowledge of Mr. Neville's driving under the influence, Trooper Burns' stated in his police report, Department's Exhibit No. 17, to which he attested, that on April 22, 2004, Yellow

Cab Company was notified of the situation, and further, Yellow Cab Company was enroute to pick up the vehicle, thus giving the respondent actual notice of Mr. Neville's drinking and driving the taxicab. As the result of the April 22, 2004 incident, the respondent had an affirmative obligation to ensure that Robinson did not drive under the influence – by either getting him assistance or denying him the ability to drive under the respondent's certificate. The respondent's management knew, or should have known, that the respondent had problems with alcohol.

Lastly, there is no evidence that the respondent's management are is not knowledgeable of the rules, statutes, regulations and policies that govern taxicab service. Rather, the evidence shows that the respondent was not diligent in enforcing with his driver the statutes and regulations by allowing Robinson to drive for the company.

III. CONCLUSIONS OF LAW

Based on the totality of the evidence and for the foregoing reasons, I conclude as a matter of law the following:

The respondent is not in violation of RCSA Section 13b-96-27(1) in that there is no evidence on the record that the respondent knowingly permitted the operation of *unlawful activities* in a taxicab on June 30, 2004;

On June 30, 2004, the respondent permitted and authorized Neville Robinson to operate a taxicab when he was not properly licensed to operate a taxicab, in violation of RCSA Section 13b-96-27(4);

On or before June 30, 2004, the respondent failed to check the driver's history of Neville Robinson to determine whether that driver was qualified to drive a taxicab, in violation of RCSA Section 13b-96-28(7);

On June 30, 2004, the respondent failed to conduct a safety inspection of its taxicab bearing registration number T3457T (VIN ending in 697154) and further, failed to keep a record of such inspection, in violation of RCSA Section 13b-96-49(a);

The allegation regarding violation of RCSA Section 13b-96-4 as to the failure of the respondent to be fully knowledgeable regarding the motor vehicle laws and Department of Transportation regulations concerning the operation of taxicabs is dismissed. The records shows, and Marco Henry appeared to have *knowledge* of the rules and regulations. Rather, it appears that the respondent was lax in requiring adherence to the rules and regulations governing taxicab service.

The allegation that the respondent failed to require that all drivers give notification of all violations of federal, state or local laws related to criminal, safety or motor vehicle violations or notification of any revocation, suspension, cancellations or disqualification of the drivers' operator's license, endorsement or permit or the right or privilege to drive for any period in violation of RCSA Sections 13b-96-29(a) and 13b-96-29(b) is hereby dismissed. The respondent may require its drivers to notify the respondent of its violations, however, its is quite probable that drivers do not follow through with this requirement. As an aside, the certificate holder is obligated to follow through with sanctions to drivers who do not disclose such information.

IV. ORDER

Based on the foregoing Finding of Facts and Conclusions of Law it is hereby ordered that the respondent will be assessed a civil penalty in the amount of \$100 for the three violations found to be supported by the evidence for a total of \$300. Accordingly, the respondent is to remit a bank check or money order made payable to "Treasurer, State of Connecticut" by the close of business 15 days from the date of the final decision.

Furthermore, the respondent's vehicles shall be suspended as follows:

- For a period of twelve months, from the date of this final decision, and every three months, to commence fifteen days from the date of this final decision, each of the respondent's taxicabs shall be suspended for one (1) day – i.e. taken out of service for one day -- a twenty-four hour period;
- During the day of suspension, the respondent shall have the suspended taxicab fully inspected for safety, until such time as all of the respondent's fleet has been 1) suspended for 24 hours and 2) given a complete safety inspection prior to being placed back into service;
- The suspended taxicabs shall be fully inspected for safety -- by an inspection facility to be chosen by the respondent from a list of such facilities offered by the Department of Motor Vehicles;
- The respondent shall submit to the Regulatory and Compliance Unit of the Department of Transportation an inspection report for each vehicle prior to the vehicle being placed back into service. Said report shall be

reviewed and approved, in writing by the Regulatory and Compliance, prior to returning each taxicab to service.

- The inspection reports shall be included in the permanent file of Certificate No. 1.

Failure to follow the orders issued herein may result in further suspension or revocation or civil penalty. This final decision constitutes notice in accordance with Connecticut General Statutes Section 4-182(c).

Dated at Newington, Connecticut on this the 12th day of August, 2009.

CONNECTICUT DEPARTMENT OF TRANSPORTATION



Laila A. Mandour
Staff Attorney III
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